STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of HBS, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DANYAIL SCHULTZ,

Respondent-Appellant,

and

CHAD SCHULTZ,

Respondent.

UNPUBLISHED
March 18, 2010

No. 292487
Oakland Circuit Court
Family Division
LC No. 06-726917-NA

In the Matter of HBS, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CHAD SCHULTZ,

Respondent-Appellant,

and

DANYAIL SCHULTZ,

Respondent.

No. 292488
Oakland Circuit Court
Family Division
LC No. 06-726917-NA

Before: JANSEN, P.J., AND MURRAY AND GLEICHER, JJ.

PER CURIAM.

In these consolidated appeals, respondents Danyail Schultz and Chad Schultz appeal as of right the trial court's order terminating their parental rights to HBS under MCL 712A.19b(3)(c)(i), (g), (i), (j), and (l).[1] We affirm.

I. BACKGROUND

HBS is respondents' biological child. Respondent mother has two other children, AM and KL. Respondent father was AM's legal father. In September 2006, HBS and AM lived with respondents in Clarkson, Michigan, and KL lived with his father. HBS, AM, and KL were ages 8, 13, and 15, respectively, at this time. It was around this time that DHS worker, Michelle Payne, became involved in this case upon discovering that AM had threatened respondent mother with a knife and had been taken to Children's Village and charged with felonious assault.

After further investigation, DHS filed a petition on October 24, 2006, alleging ongoing verbal, physical, and sexual abuse of AM and KL. Termination of respondents' parental rights to both AM and HBS was requested under MCL 712.A19b(3)(b)(i) and (ii), (g), and (j).[2] Upon filing the petition, HBS and AM were immediately removed from the home, and HBS was placed in the care of respondent father's cousin, Matthew Schultz, and his wife, Lisa Schultz.

The matter proceeded to trial where the evidence established that the family had a history with DHS dating back to 1994[3] and, most notably, with the Tennessee Department of Children's Services dating back to 2004. The involvement with Tennessee authorities commenced when an investigation was conducted based on allegations that the children were physically abused in the home and that respondent father had sexually assaulted KL, who was living with the family at that time.[4]

According to KL, respondent father was under the influence of drugs and alcohol when he entered KL's cabin during a family camping trip and forced KL to perform oral sex before anally penetrating him. KL was 13 at that time. When KL reported this incident to respondent mother, she accused him of lying, yelled at him and beat him. Respondent father had previously informed respondent mother that it was in fact KL who had raped him – specifically (as respondent father also testified), that respondent father had awoken to having his own penis in KL's mouth. Respondent mother testified that she thought KL was gay and believed respondent father's version of events. Respondent father was subsequently charged in Tennessee with

---

[1] Sections 19b(3)(i) and (l) are applicable only to respondent Danyail Schultz.

[2] A Tennessee court previously terminated respondent mother's parental rights with respect to KL.

[3] Previous protective services referrals in Michigan pertained to injuries AM and KL had sustained, including burns and knife cuts, and allegations of improper supervision and sexual abuse.

[4] The family had moved to Tennessee in 2001.

sexual assault, but pleaded guilty to aggravated assault and served jail time. He was also ordered to have no contact with any of the children.

Because Tennessee authorities intended to remove AM from respondent mother's care, respondent mother sent AM to live with relatives for several months.[5] Upon respondent father's subsequent release from jail, he returned to Michigan to live with respondent mother, who had relocated to Michigan following respondent father's incarceration and was living with HBS and AM. On this note, both respondents testified as to their ignorance of the no contact order against respondent father.

In addition to the sexual abuse, evidence was presented of verbal and sexual abuse of both AM and KL, often occurring in HBS's presence. For example, HBS had witnessed respondent mother hit AM with an open hand and a belt on several occasions and witnessed both respondents yelling or speaking in a raised voice to AM. Additionally, HBS admitted that respondent mother spanked her several times. Besides the abuse in HBS's presence, there was evidence that both respondents had beaten AM and KL, sometimes leaving bloody noses and bruises, and that respondent mother would pour liquid dish soap down AM and KL's throats for using foul language, drag AM by her hair, and swear at AM and call her names such as bitch, tramp, whore, cunt, moron and retarded. Respondent father, who did nothing to stop respondent mother's behavior, had also fondled KL on one occasion prior to the campground incident, and respondent mother smacked KL when he yelled at respondent father for that.

During the pendency of the proceedings initiated in 2006, respondent mother completed two parenting classes and an anger management class. Despite these services, as well as individual counseling, respondent mother continued to deny that she had abused AM, or that problems existed regarding her parenting skills. Following trial, on September 26, 2007, the court found that while termination as to AM was warranted under MCL 712A.19b(3)(b)(i) and (j), the prosecution failed to establish the existence of a reasonable likelihood that HBS would suffer injury or abuse in the foreseeable future if placed in respondents' home. Accordingly, the court retained jurisdiction over HBS and respondents were required under the parent-agency agreement to participate in a psychological assessment, attend individual counseling, submit to random drug screens, benefit from additional parenting skills training, provide a financial plan for providing for HBS, maintain suitable housing, and conduct regular visits with HBS. Respondent mother subsequently appealed that order, and this Court affirmed. *In re AM*, unpublished opinion per curiam of the Court of Appeals, issued July 10, 2008 (Docket No. 283561).

On October 27, 2008, DHS filed the supplemental petition underlying the instant appeal, this time alleging that neither parent had benefited from services, further services were unavailable, respondent father continued to abuse alcohol and engage in criminal behavior, and both respondents continued to engage in domestic violence. The petition requested termination under MCL 712A.19b(3)(c)(i), (g), (i), (j) and (l).

[5] KL also went to live with his biological father following the sexual assault.

At the subsequent hearing, evidence was presented of respondents' continuing domestic problems and legal violations – many occurring in HBS's presence, as well as their lack of progress in therapy. On February 14, 2008, respondent father was arrested for his involvement in a bar fight. He was charged with assault, but pleaded guilty to disorderly conduct. Notably, as a condition of his parole regarding his Tennessee conviction involving KL, respondent father was prohibited from frequenting any establishment selling alcohol. On this note, Matthew Schultz indicated that although respondent father's alcoholism has improved, respondent father has continued to drink socially despite the court's ordering him to avoid alcohol. In June 2008, police responded to respondent father's report of domestic violence and found respondents involved in a "heated altercation" ostensibly precipitated by respondent mother's accusing respondent father of drinking and driving and her breaking several of his personal items. Evidence was presented that both parties had been drinking.

In July 2008, respondents accompanied Matthew and Lisa Schultz on a cruise with HBS. Despite a court order to the contrary, respondents participated in unsupervised visits with HBS throughout the cruise and engaged in other inappropriate behavior. For example, during the cruise, respondent mother – with HBS at her side – confronted and yelled at respondent father during a theater show around midnight. Matthew Schultz testified that this was one of three arguments between respondents that occurred in front of HBS on the cruise, and that on several nights respondent mother was more interested in drinking and partying than in putting HBS to bed. Respondent mother also neglected to timely administer HBS's asthma medication, and on one occasion even forgot to administer the medication at all. Additionally during the cruise, respondent father was detained, also in HBS's presence, on several warrants allegedly pertaining to the bar fight in February.

Despite these events, evidence was presented that respondents maintained adequate housing, visited HBS regularly, and had completed a number of parenting classes, therapy sessions, and psychological evaluations. However, respondents were not forthcoming to DHS about their brushes with police and, contrary to the report of one of their therapists, Dr. Tracey Stulberg, Nia Bonds of DHS testified that neither parent was benefiting from counseling. In particular, Bonds noted that respondent mother continued to disregard rules, denied abusing AM or KL, and attempted to set up visits with HBS that DHS had not approved. Additionally, both parents continued to deny that respondent father had sexually assaulted KL.

On December 15, 2008, the court found that several statutory bases existed for termination as requested in the petition. Factoring into the court's decision were respondent father's bar fight, the domestic violence dispute in June 2008, the parties' behavior aboard the cruise and violation of the court's order, and respondent mother's failure to abide by DHS's visitation rules. In its bench opinion, the court observed,

> And they may be making progress but this case has been going on for two years and this child needs permanency and the time has come and while they're on subject to dispositional orders, while they're subject to a Parent Agency Agreement to be in a position where father gets arrested for disorderly conduct, where the mother gets angry and throws things to the point that the police are called, that the parents are allowed to go on a cruise by the Court with specific orders and don't follow the orders, that's not progress.

Following the best interest hearing, the court found that while respondents had shown progress since the case commenced, it was undisputed that after 31 months, respondents were not ready to have HBS back.[6] Additionally, the court observed that respondents continue to blame their children and others for their problems and refuse to accept responsibility, and noted that HBS was currently stable and showed no desire towards reunification. Thus, the court concluded that respondents had "spent too much time looking out for their own best interests and not for their child's best interests," and terminated their parental rights accordingly. The following appeals ensued.

II. ANALYSIS

A. STANDARD OF REVIEW

"Appellate courts are obliged to defer to a trial court's factual findings at termination proceedings if those findings do not constitute clear error." *In re Rood*, 483 Mich 73, 90 (opinion by Corrigan, J.); 763 NW2d 587 (2009), citing MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 356; 612 NW2d 407 (2000). Once a statutory ground for termination is established by clear and convincing evidence, the trial court must order termination if "termination of parental rights is in the child's best interests." MCL 712A.19b(5). "We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest." *In re Trejo*, 462 Mich at 356-357. "A finding is 'clearly erroneous' [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Rood*, 483 Mich at 91 (quotation marks and citation omitted).

B. STATUTORY GROUNDS FOR TERMINATION

The court did not clearly err in finding that statutory grounds for termination existed against both respondents under MCL 712A.19b(3)(c)(i) (conditions leading to the adjudication continue to exist or there is no reasonable likelihood the conditions will be rectified within a reasonable time considering the child's age and the parents have received notice and a hearing and an opportunity to rectify those conditions), (g) (without regard to intent, failure to provide proper care or custody), and (j) (reasonable likelihood that the child would be harmed if returned to respondents' custody). Indeed, the record is replete with respondents' continual brushes with the law, domestic violence problems, and alcohol abuse, even after the lengthy proceedings involving AM had concluded.[7]

---

[6] Respondent father's counsel admitted at the hearing, "We're not coming here today to say that it's time to reunify the family."

[7] Respondent mother does not challenge the termination of her rights under MCL 712A.19b(3)(i) (parental rights to another child were previously terminated due to serious neglect or abuse and previous attempts to rehabilitate the parent failed) or (l) (parental rights to another child were terminated). Because it is only necessary to establish one statutory ground for termination by clear and convincing evidence, *In re Trejo*, 462 Mich at 350, respondent mother's failure to challenge the termination of her parental rights under § 19b(3)(i) and (l) alone precludes any

(continued…)

In particular, the evidence revealed respondent father's involvement, arrest and conviction for instigating a bar fight in February 2008 despite a court order prohibiting his presence at bars. Evidence was presented that respondent father, an alcoholic, has continued to drink "socially," also in violation of a court order, and has missed court ordered drug screening on several occasions. In June 2008, a domestic dispute between respondents escalated to the point of involving law enforcement when respondent mother became angry with respondent father for drinking and driving and damaged some or his personal items. Evidence was presented that respondent mother had also been drinking. A month later, during a cruise, respondents engaged in a heated and disruptive argument in a theater during a performance and violated a court order prohibiting them from being alone with HBS while on the cruise. Additionally, before the cruise concluded, respondent father was detained by law enforcement for matters pertaining to his prior bar fight. Notably, the argument and detention occurred in HBS's presence.

Besides these incidents, directly revealing of respondent mother's lack of care for HBS's well-being are her attempt to manipulate DHS by setting up parenting time that DHS later revoked – much to HBS's chagrin because she had wanted to see respondent mother's puppy – because such time was scheduled without DHS's permission and her failure to properly administer HBS's asthma medication.

Respondents' argument that despite these mishaps, they continued to progress in therapy, is undercut by the fact that they withheld information of the aforementioned events from their therapist until *after* the supplemental petition underlying this appeal was filed, and continued to deny that respondent father had in fact sexually abused KL[8] or, as respondent father maintained, that respondent mother had abused AM. This last fact is significant given that respondent father took no action to stop respondent mother from abusing AM. In a similar vein, respondent father refused to acknowledge his fault in the bar fight despite his guilty plea. Respondent mother even feigned ignorance of the aforementioned events when questioned about them by the DHS caseworker before the petition was filed. Moreover, respondents received therapy and services during the proceedings involving AM, but failed to achieve any lasting benefit.

Respondents point to Stulberg's testimony that they were making satisfactory progress in therapy and that respondent mother had taken responsibility for abusing AM. However, we defer to the trial court's superior position in according weight to this testimony, which it specifically found lacked credibility. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). In this respect, the court presciently noted that notwithstanding therapy, the case had been ongoing for two years and HBS needed permanency. And despite respondent mother's claim that she was denied sufficient therapy, such a conclusion is hardly sustainable given that she has undergone three rounds of multiple therapy sessions and two psychological profiles in addition to parenting classes since this case commenced. Under all these facts, the court did not clearly err in finding

(…continued)

argument that a statutory ground for termination was not established by clear and convincing evidence.

[8] Contrary to respondent father's claim, this denial goes directly to whether there was progress in therapy.

a statutory basis for termination under MCL 712A.19b(3)(c)(i), (3)(g), and (3)(j) as to both respondents.

B. BEST INTEREST FINDINGS

In challenging the court's determination that termination was in the best interest of HBS, respondent mother reiterates that she should have been permitted more time for therapy, while respondent father emphasizes his involvement in HBS's life and his ability to provide for her material needs. Respondents are correct that such concerns may factor into the court's best interest calculus. *In re JS & SM*, 231 Mich App 92, 100-102; 585 NW2d 326 (1998), overruled in part on other grounds, *In re Trejo*, 462 Mich at 353 n 10. Notwithstanding, we can find no clear error in the trial court's findings where there was ongoing concern of domestic violence, substance abuse, and anger in respondents' home and respondents continued to blame their children for their problems. Further, it is dubious whether more therapy would be beneficial where both parents accuse their children of lying and refuse to accept responsibility for their actions–especially with respect to respondent father's sexually abusing KL. On this score, we are mindful that the way a parent treated one child is probative of how he will treat another child. *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001). In sum, the evidence supported the court's conclusion that "[t]his is not a close case," and that respondents had "spent too much time looking out for their own best interests and not for their child's best interests."

Affirmed.

/s/ Kathleen Jansen
/s/ Christopher M. Murray
/s/ Elizabeth L. Gleicher